

Bylaws

The Essential Ingredients for Good Bylaws

Overview

As counsel to many charter schools, I have reviewed bylaws that are good, surprisingly bad, and everything in between. Drafting good bylaws is an art that requires careful attention to legal and regulatory requirements, a balance between precision and flexibility, best practices, and careful tailoring to the school and its mission. Hopefully, these recommendations will help charter schools craft bylaws that will support the goals of providing a first-rate education, good governance, and strong financial management.

Outlined below are my top ten recommendations for first-class, state-of-the-art bylaws.

1. Process

Charter school boards should draft or revise their bylaws in collaboration with legal counsel who has expertise in charter school law. Boards get the best results when they provide their attorneys with clear instructions, carefully review and comment on drafts, and—after thoughtful consideration—formally approve the bylaws through a board vote.

2. Mission, Values and Practice

Bylaws are not one-size-fits-all and should reflect the school's particular mission, values, and practices. For example, if a school has an arts-focused mission, including the mission statement in the bylaws will help align board decisions with that mission. Similarly, a board may, over time, develop an efficient governance structure through the use of a committee system. That system should be reflected in the bylaws when they are revised.

3. Legal Requirements

In many states, charter school bylaws must comply with two statutes: the state's charter school enabling act and its nonprofit corporation law. In the District of Columbia, for example, the bylaws need to comply with the DC School Reform Act (SRA) and the DC Nonprofit Corporation Act (NCA). Legal requirements specified in these statutes include the number of trustees, quorum requirements, residency and parent membership requirements,



board actions taken without a meeting, and dissolution requirements if a school loses its charter.

4. Duties of Board Members

Being a charter school board member entails serious duties. Boards that don't pay close attention to academic performance or permit the misuse of public dollars face the risk of increased oversight, reprimand, or even closure. Board bylaws should summarize the board members' duties to act in good faith, in the best interests of the school, to discharge their duties with reasonable care, and to disclose information material to the discharge of their duties.

5. Number of Board Members, Quorum, and Term Limits

The bylaws should provide for a range in the number of board members. In the District of Columbia, for example, the SRA permits up to 15 members and the NCA requires a minimum of three. Within these legal parameters, a board should select a maximum that will ensure that its members have the diverse expertise necessary to govern the school but also ensure that it will not be difficult to satisfy quorum requirements. It is best that the quorum be a majority of members then in office. Best practice also suggests that board members be limited to two three-year terms.

6. Open Meetings, Executive Session, and Voting

In many states, charter school board meetings are legally required to be open to the public except when a board needs to conduct sensitive discussions, which should be held in executive session. The bylaws should state the circumstances in which executive session is permissible and the voting requirements for going into executive session. Even if applicable state law does not require open meetings, serious consideration should be given to requiring open meetings, given that charter schools perform an important public purpose by educating children and spend substantial public dollars.

Proxy voting is prohibited by most states and should not be permitted in bylaws for school boards even in states that permit proxy voting, as board members should carefully consider the board's discussion on an issue before they vote. However, bylaws should be drafted to permit board meetings to be conducted by telephone or other means allowing for present-time participation in the meeting.



7. Powers and Duties of Officers

The bylaws should delineate the powers and duties of the officers of the corporation with some specificity, but at the same time, include general language to cover unanticipated situations.

8. Committees

The bylaws should provide for standing committees with jurisdiction over core issues. At a minimum, boards should have academic performance, finance, and governance committees. An executive committee should also be considered as it allows a board to act quickly between board meetings; however, executive committees have drawbacks that arise when not all board members participate in board decisions.

9. Indemnification and D&O Insurance

The bylaws should have a strong provision indemnifying board members against liabilities incurred in the discharge of their duties. The bylaws should also require that the school purchase Directors and Officers (D&O) insurance.

10. Conflicts of Interest

Boards need to have a strong conflict of interest policy that ensures that all conflicts are disclosed and appropriately addressed. Although the bylaws should reference a conflicts policy and require that board members review and sign it, it is better to make the policy a separate document so that it can be revised without requiring an amendment to the bylaws.



Stephen is a principal at The Marcus Firm, PLLC—a law firm in Washington, D.C. that advises charter schools. If you have further questions, feel free to contact the author at stephen@marcusfirm.com.